

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. ~~112~~ 86.

ELLIS H. ROBERTS, TREASURER OF THE UNITED
STATES, PETITIONER.

THE UNITED STATES BY MEL. MARIE A. VALENTINE.

ON WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA.

PETITION FOR CERTIORARI FILED MAY 31, 1898.
CERTIORARI AND RETURN FILED NOVEMBER 19, 1898.
(1898.)

1 In the court of appeals of the District of Columbia.

ELLIS H. ROBERTS, TREASURER OF THE UNITED States, appellant, <i>vs.</i> THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine.	}	No. 792.
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Supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine <i>vs.</i> ELLIS H. ROBERTS, TREASURER OF THE UNITED States.	}	At law. No. 41621.
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UNITED STATES OF AMERICA, *District of Columbia, ss.*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed December 2, 1897. J. R. Young, clerk.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine <i>vs.</i> ELLIS H. ROBERTS, AS TREASURER OF THE United States.	}	Law. No. 41621.
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To the honorable the supreme court of the District of Columbia:

Your petitioner, Marie A. Valentine, respectfully, represents:

I. That she is a native-born citizen of the United States and is and was during all the time hereinafter mentioned a resident of Brooklyn, in the State of New York.

II. That the respondent, Ellis Roberts, is, and ever since 1st day of July, 1897, has been, as your petitioner is informed and believes, the Treasurer of the United States and ex officio commissioner of the sinking fund of the District of Columbia, and this proceeding for a mandamus is instituted against him in that capacity.

III. That during all the times mentioned in this petition one Charles E. Evans (an assignor of your petitioner) was a citizen of the United States and a resident of Brooklyn, State of New York, and during the years 1871 to 1874, inclusive, said Charles E. Evans was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets, and building sewers and making other improvements on the streets and avenues of the District of Columbia, and that he carried on said business under the name of "Evans Concrete Co.," as your petitioner is informed and believes.

IV. That the work done and materials furnished by the said Charles E. Evans under his contracts with duly authorized officers constituting the board of public works of the District of Columbia and their successors amounted to many hundreds of thousands of dollars in the aggregate, much of which remained unpaid on the first day of August, 1874.

V. On or about the first day of August, 1874, certain claims under said contracts of the said Charles E. Evans (doing business, as aforesaid, as Evans Concrete Co.) had been duly submitted for examination and audit, in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, to the board of audit mentioned in said act, and the said board of audit had duly audited certain claims of said Evans and had signed and issued for delivery to said Charles E. Evans two of the certificates in words and figures as follows, to wit:

No. 19429.]

[\$19,616.25.

DISTRICT OF COLUMBIA, WASHINGTON, *Aug. 1, 1874.*

This certifies that upon examination and audit of claim No. 2396, class No. 4, there is found to be due to the Evans Concrete Co. the sum of nineteen thousand six hundred and sixteen dollars and twenty-five cents, being on account of contract work (settlement claim 1567).

Issued by the board of audit constituted by an act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874.

R. W. TAYLOR,

First Comptroller, U. S. Treasury,

J. M. BRODHEAD,

Second Comptroller, U. S. Treasury,

Board of Audit.

Countersigned and registered by—

GEO. W. BEALL,

Dep. Comptroller, District of Columbia.

No. 8879.]

[\$909.40.

DISTRICT OF COLUMBIA, WASHINGTON, *Aug. 1, 1874*

This certifies that upon examination and audit claim No. 1126, class No. 2, there is found to be due to Evans Concrete Co. the sum of nine hundred and nine dollars and forty cents, being an account of auditor's certificates.

3 Issued by the board of audit constituted by an act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874.

R. W. TAYLOR,

1st Comptroller, U. S. Treasury,

J. M. BRODHEAD,

2d Comptroller, U. S. Treasury,

Board of Audit.

Countersigned and registered by—

GEO. W. BEALL,

Dep. Comptroller, District of Columbia.

VI. At the time said certificates were issued claims had been made by the Commissioners of the District of Columbia (successors to said board of public works) that said Charles E. Evans was liable for the expense of repairs which were needed on certain pavements laid by him, which claims, however, as it afterwards appeared, were not well founded, as your petitioner is informed and believes.

But the said board of audit of the District of Columbia, upon issuing the board of audit certificates No. 19429 and No. 8879, as aforesaid, instead of delivering the same to said Charles F. Evans, unlawfully withheld them and unlawfully delivered said certificates unto the Commissioners of the District of Columbia, and the said Commissioners of the District of Columbia unlawfully detained and withheld the said certificates from said Charles E. Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements, notwithstanding he, said Evans, had duly given ample security for the performance of all his obligations, as your petitioner is informed and believes.

VII. The said certificates from the time of their date, to wit, from about August 1st, 1874, until about the 9th day of June, 1890, remained deposited in a tin box in the office of the Treasurer of the United States (who was ex officio commissioner of the sinking fund of the District of Columbia), the key of said box being in the possession of said Treasurer, who held it and the contents of said box, subject to the control of the Commissioners of the District of Columbia, as your petitioner is informed and believes.

VIII. Prior to the first day of January, 1881, the said two board of audit certificates had been duly assigned and all the interest of Charles E. Evans and of the Evans Concrete Co. therein had been transferred to one Thomas F. Fisher, a resident of said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated Jan. 16, 1880, and at divers times both before and after said 13th day of January, 1881, demand and request was made by the said Thomas J. Fisher and his assignees here-

inafter mentioned for the redemption of said certificates by issuing in the place thereof 3.65 bonds, as provided in sec. 9 — the act of June 16, 1880, as your petitioner is informed and believes.

Said provision of law is as follows:

SEC. 9. That the Treasurer of the United States as ex officio sinking fund commissioner of the District of Columbia is hereby authorized and directed to redeem the outstanding certificates of the late board of audit, created by the act approved June twentieth eighteen hundred and seventy-four, with the interest accrued on said certificates by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia as provided in section seven of the act approved June twentieth, eighteen hundred and seventy-four, entitled "An act for the government of the District of Columbia, and for other purposes," and acts amendatory thereof, said bonds to bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to

be issued by the said seventh section of said act, and shall be signed by the said Treasurer, as ex officio sinking fund commissioner of the District of Columbia, and numbered, countersigned, sealed and registered, as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates.

IX. Refusal was made by the said Treasurer of each and every such demand to issue bonds for said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim as aforesaid to detain said certificates as collateral security.

X. Thereafter, in December, 1880, said Thomas J. Fisher, in pursuance of sections I and II — said act of Congress passed Jan. 16, 1880 (chapter 243), commenced an action in the Court of Claims of the United States against the District of Columbia to recover (in addition to a large number of other claims originally due said Charles F. Evans and transferred by assignment to said Thomas J. Fisher) the amounts certified by said certificates of the board of audit, No. 19429 and No. 8879, to be due said Evans Concrete Co.

XI. During the December term, 1889-'90, of the said Court of Claims of the United States the executors of the will of said Thomas J. Fisher—who had during the pending of said action deceased, leaving a last will and testament, duly admitted to probate in the supreme court of the District of Columbia—were admitted to prosecute the said action as plaintiffs after a suggestion of death of the original plaintiff, duly made upon the record, and the said action was revived and allowed to be prosecuted by Edward J. Stollwagen, Thomas M. Gale, and George E. Hamilton as such executors of the will of said Thomas J. Fisher, deceased.

XII. On the 9th day of June, 1890, it was agreed between the parties to the aforesaid action in the Court of Claims, as your petitioner is informed and believes, to dispose of the said action by delivering to the plaintiffs therein the said board of audit certificates No. 19429 and No. 8879 (in respect to which the plaintiffs' claims were at that time conceded), and that the other matters, as to which there was dispute, should be withdrawn from said court by a discontinuance of said action.

XIII. Thereupon and on said 9th day of June, 1890, the Commissioners of the District of Columbia, under the written advice of the Assistant Attorney-General in charge of said case, obtained from the said Treasurer and delivered to the plaintiff's attorney in said action the said two certificates, No. 19429 and No. 8879, which were still held in the Treasurer's custody, subject to the order of said District Commissioners, and the said certificates were so taken by said plaintiffs' attorney into his possession, as your petitioner is informed and believes.

(A copy of said letter of advice to the District Commissioners is hereto annexed, marked "Exhibit A," the original of which will be produced at the hearing of this application.)

XIV. The plaintiff's attorney thereupon presented the said two certificates to the Treasurer of the United States, as your petitioner is informed and believes, and requested him, in his capacity as commissioner of the sinking fund of the District of Columbia, to issue for said certificates 3.65 bonds authorized by an act of Congress approved June 20,

1874, to redeem the same, in pursuance of section 9 of said act of June 16, 1880, which is hereinbefore set forth in paragraph VIII of this petition.

XV. The then Treasurer of the United States, as your petitioner is informed and believes, in view of the lapse of time since said certificates were issued, refused and declined to redeem said certificates or to issue bonds for the payment thereof, or in any way to pay the same, unless a judgment of the said Court of Claims, in which the said action upon said certificates had been brought, should be first entered for his protection.

XVI. Thereupon, to satisfy the objections of said Treasurer and for his protection, as your petitioner is informed and believes, a judgment upon the said two certificates, No. 19429 and No. 8879, was entered in the aforesaid action in favor of the claimants, hereinafter set forth.

XVII. Prior to entering said judgment it became necessary to dispose of a certain claim of one D. M. Davis (who had interposed in the action and consolidated an action of his own and claims against said Evans with said action of Fisher), and by an amicable arrangement it was agreed that out of the sums to be adjudged due on said certificates \$900 should be adjudged to said D. M. Davis and received by him in satisfaction of all his claims on the subject-matter, as your petitioner is informed and believes.

XVIII. Prior to the rendering of said judgment by the Court of Claims, in order that the consideration of all other matters should be eliminated from the plaintiff's claim, and that the action and judgment should be solely upon the aforesaid certificates No. 19429 and No. 8879, as your petitioner is informed and believes, the petition of the plaintiff in said action of Thomas J. Fisher so revived and prosecuted by
6 his executors was amended by striking therefrom all reference to other claims of the plaintiff, and action of the court was taken therein as follows:

In the Court of Claims, December term, 1889, to wit, June , 1890.

THOMAS J. FISHER, ASSIGNEE OF CHARLES E. EVANS, }
vs.
THE DISTRICT OF COLUMBIA. }

Now comes the claimant and moves the court that the petition filed in the above-entitled action December 15, 1890, be amended by striking therefrom all of said petition after the word "Columbia," on line 32, paragraph 3, on page 2, to and including paragraphs 23, on page 19, of said petition, and also striking from said petition all thereof following paragraph 26, on page 20, and substituting in the place of the latter matter so stricken out as follows:

"27. That said board of audit did of their own motion, upon an examination of the claims of said Evans, make two awards to said Evans of the sums of \$909.40 and \$19,616.25, respectively, for which they issued their certificates numbered 8879 and 19429, dated August 1, 1874; that said certificates were thereupon duly assigned by said Evans to said Thomas J. Fisher, and that the claimant is the lawful owner and holder of said certificates, and payment of the same has been demanded, but the same has been refused and said certificates remain wholly unpaid.

"Wherefore the claimants pray judgment for the amount of said certificates as a debt due on the 1st day of August, 1874."

B. E. VALENTINE,
Attorney for Claimants.

The defendant consents to said amendments.

JOHN B. COTTON,
Assistant Attorney-General.

Filed June 12, 1890.

(Endorsed:) Allowed. W. A. R., Ch. J.

XIX. Thereupon and after the lapse of 90 days the said Treasurer of the United States, in pursuance of the authority conferred upon him by the act of Congress approved March 3, 1881, as follows:

"That the Treasurer of the United States, as ex officio sinking fund commissioner, is hereby authorized, whenever in his opinion it will be more advantageous for the interest of the District of Columbia to do so, to sell the bonds authorized to be issued under the provisions of the sixth section of the act of the Congress of the United States, entitled 'An act,' etc., approved June 16, 1880, for the satisfaction of the judgments which may be rendered by said Court of Claims under the provisions of the said act, and pay the said judgments from the proceeds of said sales, instead of delivering to said judgment claimants the said bonds as provided for in said act." (21 Stat., p. 466.)

paid in cash the amount of said certificates, with interest at the rate of 3.65 per cent only.

7 XX. The said executors of Thomas J. Fisher, prior to the payment of said amount, in pursuance to the order of the supreme court of the District of Columbia, sitting for the transaction of orphans' court business, made on the 15th day of September, 1890, assigned and transferred to one Marcus W. Robinson all claims against the District of Columbia growing out of the contracts of said Evans with the District of Columbia, which had been assigned by said Evans to their testator, Thomas J. Fisher, as your petitioner is informed and believes, and thereafter said Marcus W. Robinson duly assigned the same and all of the same to your petitioner. Copies of said assignments are hereinafter annexed, marked "Exhibits Assignments 1 and 2."

XXI. Thereafter, and on the 13th day of August, 1894, an act of Congress was duly passed providing as follows:

"That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June sixteenth, eighteen hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rates of interest due upon said certificates from their date up to the date of approval of said act providing for their redemption." (28 Stat., 271.)

XXII. Thereafter your petitioner presented her claim for such residue of interest upon the amounts of said board of audit's certificates No. 19429 and No. 8879 to the above-named Treasurer of the United States and requested payment thereof, and laid before said Treasurer all the facts and material allegations hereinbefore set forth, but the said Treasurer refused and still refuses to make payment, on the ground that the

said board of audit certificates had not been "redeemed" by him or his predecessor in office, but that the action taken upon the same was the payment of a judgment recovered upon them. A copy of the refusal of said Treasurer is hereto annexed, marked "Exhibit Treasurer's refusal."

XXIII. Your petitioner respectfully represents that both she and her assignors have done every act incumbent upon them or possible for them to do to entitle themselves to the benefit of the aforesaid acts of Congress providing for the redemption of said board of audit certificates and for the payment of the residue of unpaid legal interest thereon, as she is informed and believes, and that she should not be prejudiced by the wrongful or mistaken acts of the officers of the District of Columbia or of the United States, but that your petitioner is entitled to the full benefits of the aforesaid act of Congress of August 13th, 1894.

Wherefore your petitioner prays that by a writ of mandamus, to be issued out of this court, addressed to the said Ellis H. Roberts, Treasurer of the United States, the said Ellis H. Roberts be directed, as such Treasurer, to pay to your petitioner, as an assignee of the aforesaid board of audit certificates and all claims against the District of Columbia arising thereunder, the said residue of 2.35 per centum per annum of unpaid legal rates of interest due upon said certificates from 8 their date up to the date of their redemption, and do and perform such other acts in connection therewith as this honorable court may adjudge your petitioner to be entitled, and as a preliminary to the issue of said mandamus a rule be now granted for said Treasurer to show cause why such writ of mandamus should not issue as aforesaid, and that your petitioner may have judgment against said respondent for her costs in this behalf laid out and expended.

MARIE ANTOINETTE VALENTINE, *Relator.*

CITY OF NEW YORK, *County Queens, ss:*

I, Marie Antoinette Valentine, relator above named, do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts thereof stated upon my personal knowledge are true, and that those said on information and belief I believe to be true.

MARIE ANTOINETTE VALENTINE.

Subscribed and sworn to before me this 22d day of November, 1897.

[SEAL.]

WILLIAM QUAYLE,
Notary Public, Kings Co.

EXHIBIT A.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 9, 1890.

In the Court of Claims.

THOMAS J. FISHER }
v. }
DISTRICT OF COLUMBIA. }

To the honorable Commissioners of the District of Columbia.

GENTLEMEN: The above action having been settled in accordance with the terms of your communication of June 9, 1890, you will please

deliver to Mr. B. F. Valentine the two certificates now in your custody, to wit:

Auditor's certificate No. 8879, dated August 1, 1874, for \$909.40;

Auditor's certificate No. 19429, August 1, 1874, for \$19,616.25.

Very respectfully,

JOHN B. COTTON,
Assistant Attorney-General.

EXHIBIT.—ASSIGNMENTS 1 AND 2.

Know all men by these presents, that we, Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, as executors of the last will and testament of Thomas J. Fisher, deceased, late of the District of Columbia, in consideration of the request of Lillian Evans and Charles E. Evans, and in pursuance of an order of the supreme court of the District of Columbia, sitting at a special term for the 9 transaction of probate business on the 15th day of September, 1890, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over, unto Marcus W. Robinson all the right, title, and interest which said Thomas J. Fisher had and all which we, as his executors, now have or may at any time be entitled to, in and to, all claims against the District of Columbia, arising out of the contracts made by said District of Columbia or the Commissioners or board of public works thereof, with Charles E. Evans, or the Evans Concrete Pavement Company, and now or heretofore the subject of action against the District of Columbia in the name of, or for the use of, said Thomas J. Fisher, as assignee of said Charles Evans: to have and to hold the same unto the said Marcus W. Robinson, his executors, administrators, and assigns to his and their use; hereby constituting him and them our attorney and attorneys irrevocable, to collect and receive the same in our names or otherwise, but at his own costs and expenses, saving us harmless from all charges and liabilities of any kind in respect thereto.

And we hereby agree to execute any further instruments or conveyances necessary or proper for the further effectuating of the said assignment and transfer of any legal interest in said claims or their proceeds.

EDWARD J. STELLWAGEN,
THOMAS M. GALE,
GEORGE E. HAMILTON,

Executors of the Late Will and Testament of Thomas J. Fisher.

DISTRICT OF COLUMBIA, ss:

On this day of September, 1890, before me personally came Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, to me known and known to be the persons mentioned in and who executed the foregoing instrument, and they thereupon acknowledged to me, jointly and severally, that they executed the same as the executors of the will of Thomas J. Fisher, deceased.

[NOTARIAL SEAL.]

JOHN J. MALONE,
Notary Public, D. C.

Know all men by these presents, that I, Marcus W. Robinson, of Brooklyn, New York, for good and valuable considerations to me paid by Marie A. Valentine, of the city of Brooklyn, the receipt of which is acknowledged, have assigned, transferred, and set over unto said Marie A. Valentine all the claims, demands, and interests of every nature, whether in action or otherwise, arising out of the contracts made by the District of Columbia with Charles E. Evans or the Evans Concrete Co., and heretofore the subject of action against the District of Columbia in the name of or for the use of one Thomas J. Fisher, being all the claims assigned to me by the executors of said Thomas J. Fisher, September 15, 1890, to have and to hold the same to the said Marie A. Valentine, her executors, administrators, and assigns forever.

10 Witness my hand and seal this 1st day of January, 1892.

MARCUS W. ROBINSON.

STATE OF NEW YORK, *County of Kings, ss:*

On this 1st day of January, 1892, before me personally appeared Marcus W. Robinson, to me personally known and known to be the person mentioned in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

BENJAMIN E. VALENTINE,
Notary Public, Kings Co., N. Y.

EXHIBIT.—TREASURER'S REFUSAL.

TREASURY DEPARTMENT,
OFFICE OF THE TREASURER,
Washington, D. C., November 3, 1897.

B. E. VALENTINE, *26 Court street, Brooklyn, N. Y.*

SIR: Your letter of the 27th ultimo enclosing a petition for the payment of interest on certain board of audit certificates under the act of Congress approved August 13, 1894, is received.

You will note that the act referred to provides for additional interest to be paid only upon board of audit certificates redeemed by the Treasurer under the act of June 16, 1880. Neither of the certificates recited in your petition was redeemed by the Treasurer, and they are not in his possession.

You state that certain judgments of the Court of Claims were issued in lieu of these certificates. These judgments were paid by this office in the manner prescribed by law, but neither of them states that they were issued in lieu of or upon debts of the District of Columbia represented by board of audit certificates.

The Treasurer has therefore no authority to pay the additional interest you demand.

Respectfully, yours,

ELLIS H. ROBERTS,
Treasurer U. S., ex officio Comr. Sinking Fund D. C.

Filed December 17, 1897. J. R. Young, clerk.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL.	}	At law. No. 41621.
Marie A. Valentine		
<i>vs.</i>		
ELLIS H. ROBERTS, AS TREASURER OF THE United States.		

Comes now the defendant and for cause why the writ of mandamus should not issue as in and by the petition in the above-entitled cause prayed shows that the certain board of audit certificates, so called, in the said petition mentioned, namely, the certificates
 11 numbered 8879 and 19429, were not redeemed by him or any person holding the office of Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims either of the said judgments was based.

HENRY E. DAVIS,
United States Attorney, District of Columbia,
Attorney for the Defendant.

H. W. B.	UNITED STATES OF AMERICA,
E. H. R.	TREASURY DEPARTMENT,
	<i>December 15, 1897.</i>

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of original papers on file in the office of the Treasurer of the United States, ex officio commissioner of the sinking fund of the District of Columbia, in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

L. J. GAGE,
Secretary of the Treasury.

S. J.
 S. M. G.

In the Court of Claims, term 1889-1890.

DAVID M. DAVIS	}	No. 246, D. C.
<i>vs.</i>		
THE DISTRICT OF COLUMBIA.		

I certify that no appeal to the Supreme Court of the United States has been taken by either party from the judgment rendered by the Court of Claims in favor of the said David M. Davis, claimant, on the 12th day of June, A. D. 1890.

Test this 11th day of September, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

Geo. A. King, att'y.

In the Court of Claims.

DAVID M. DAVIS
vs.
THE DISTRICT OF COLUMBIA. } 246.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

12 The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said David M. Davis, claimant, do have and recover in the manner provided by the act of June 16, 1880, chapter 243, in the sum of nine hundred dollars (\$900) upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 12th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

Attest:

WILLIAM A. RICHARDSON,
Chief Justice.

Geo. A. King, att'y of record.

[Endorsed.]

WASHINGTON, D. C., September 12, 1890.

Received from the Treasurer U. S. his check, No. 84233, payable to the order of David M. Davis, for fourteen hundred twenty-nine $\frac{29}{100}$ dollars (\$1,429.29), in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims in cause No. 246, David M. Davis vs. The District of Columbia.

Principal of judgment, cause No. 246.....	\$900
Interest from Aug. 1, 1874, to Sept. 11, 1890, at 3.65 %.....	529. 29
	<hr/>
	\$1, 429. 29

GEORGE A. KING,
Attorney of Record.

In the Court of Claims, term 1889-1890.

EDWARD J. STELLWAGEN, THOMAS M. GALE, AND
George E. Hamilton, executors of Thomas J. Fisher,
deceased, assignee of Charles E. Evans,
vs.
THE DISTRICT OF COLUMBIA. } No. 246, D. C.

I certify that no appeal to the Supreme Court of the United States has been taken by either party from the judgment rendered by the Court of Claims in favor of the said Edward J. Stellwagen, Thomas M. Gale, and

George E. Hamilton, executors of Thomas J. Fisher, deceased, assignee of Charles E. Evans, claimants, on the 12th day of June, A. D. 1890.

Test this 11th day of September, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

B. E. Valentine, esq., att'y of record.

13

In the Court of Claims.

EDWARD J. STELLWAGEN, THOMAS M. GALE, AND }
George E. Hamilton, executors of Thomas J. }
Fisher, deceased, assignee of Charles E. Evans, } 246.
vs.

THE DISTRICT OF COLUMBIA.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, assignee of Charles E. Evans, do have and recover, in the manner provided by the act of June 16, 1880, chapter 243, the sum of nineteen thousand six hundred and twenty-five $\frac{65}{100}$ dollars upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 12th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst Clerk, Court of Claims.

Attest:

WILLIAM A. RICHARDSON,
Chief Justice.

B. E. Valentine, att'y of record.

[Endorsed.]

WASHINGTON, D. C., September 12, 1890.

Received from the Treasurer U. S. two checks, as follows: No. 84235, for eighteen thousand six hundred sixty-seven $\frac{49}{100}$ dollars (\$18,667.49), and No. 84236, for twelve thousand five hundred x/00 dollars (\$12,500.x), both payable to the order of Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, deceased, assignees of Charles E. Evans, in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims in cause No. 246, Edward J. Stellwagen et al. vs. The District of Columbia.

Principal of judgment, cause No. 246 \$19,625. 65
Interest from Aug. 1, 1874, to Sept. 11, 1890, at 3.65% 11,541. 84

\$31,167. 49

B. E. VALENTINE,
Att'y of Record.

WASHINGTON, D. C., September , 1890.

Received from the Treasurer U. S. his check, No. , payable to the order of Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, deceased, assignees of Charles E. Evans, for thirty-one thousand one hundred sixty-seven $\frac{49}{100}$ dollars (31,167.49).

Demurrer.—Filed December 18, 1897.

In the supreme court of the District of Columbia.

THE UNITED STATES EX REL. MARIE A. VALENTINE,	} No. 41621. At law.
<i>vs.</i>	
ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES.	

Now comes the relator and saith as to the answer of the defendant, Ellis H. Roberts, by him pleaded, that the same and the matters therein contained, in manner and form as are pleaded and set forth, are not sufficient in law to bar or preclude her, the said relator, from having or maintaining her aforesaid writ of mandamus against him, the said defendant, and that she, the said relator, is not bound to answer or reply to the same.

And this the relator is ready to verify.
Wherefore the relator, for want of a sufficient plea in this behalf, prays judgment.

B. E. VALENTINE,
Attorney for Petitioner.

Dated Dec. 18, 1897.

Judgment ordering mandamus.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine, petitioner,	} At law. No. 41621.
<i>vs.</i>	
ELLIS H. ROBERTS, AS TREASURER OF THE United States, respondent.	

This cause coming on to be heard upon the petition for a writ of mandamus, rule to show cause, and the return thereto, and the demurrer to the return, and, after hearing arguments of the respective attorneys, it is considered and ordered that a writ of mandamus issue to Ellis H. Roberts, Treasurer of the United States, respondent therein, commanding him to pay to the relator herein, pursuant to the act of Congress approved August 13, 1894, the interest on the board of audit certificates numbered 19429, for \$19,616.25, and 8879, for \$909.40, at the rate of 2.35 per centum per annum from the date of said certificates, to wit, August 1st, 1874, up to the date of the approval of the act of Congress providing for their redemption, to wit, June 16, 1880, together with the costs of this case.

March 21st, 1898.

CHAS. C. COLE,
Asso. Justice.

Appeal noted by respondent to court of appeals in open court.

Note of appeal.—Filed March 21, 1898.

In the supreme court of the District of Columbia.

UNITED STATES EX REL. VALENTINE	}	At law. No. 41621.
vs.		
ELLIS H. ROBERTS.		

The clerk of said court will note an appeal to the court of appeals on behalf of the defendant from the judgment entered in the above-entitled cause and will issue citation thereon.

HENRY E. DAVIS,
Attorney for Defendant.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL.	}	At law. No. 41621.
Marie A. Valentine		
vs.		
ELLIS H. ROBERTS, TREASURER OF THE United States.		

The President of the United States to The United States of America ex rel. Marie A. Valentine, greeting:

You are hereby cited and admonished to be and appear at a court of appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office, supreme court of the District of Columbia, on the 21st day of March, 1898, wherein Ellis H. Roberts, Treasurer of the United States, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 21st day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal supreme court of the
District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this day of , 189 .

Attorney for Appellee.

16 [Endorsed:] No. 41621. Law. United States ex rel. Marie A. Valentine vs. Ellis H. Roberts, Treasurer U. S. Citation. Issued Mar. 21st, 1898. Served cop of the within citation on within-named appellee. Not to be found. April 14, 1898. Aulick Palmer, marshal. C. Henry E. Davis, attorney for appellant.

Memorandum.

April 4, 1898.—Appeal bond filed.

Supreme court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 29, inclusive, are true copies of originals in cause No. 41621, at law, wherein The United States of America ex rel. Marie A. Valentine is plaintiff and Ellis H. Roberts, Treasurer of the United States, is defendant, as the same remains upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, the 14th day of April, A. D. 1898.

[Seal supreme court of the
District of Columbia.]

JOHN R. YOUNG, *Clerk.*

(Endorsed on cover:) District of Columbia supreme court. No. 792. Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States of America ex rel. Marie A. Valentine. Court of appeals, District of Columbia. Filed Apr. 15, 1898. Robert Willett, clerk.

17

TUESDAY, May 3d, A. D. 1898.

ELLIS H. ROBERTS, TREASURER OF THE UNITED	}	No. 792.
States, appellant,		
vs.		
THE UNITED STATES OF AMERICA EX REL.		
Marie A. Valentine.		

The argument in the above-entitled cause was commenced by Mr. D. W. Baker, attorney for the appellant, and was continued by Mr. Benj. E. Valentine, attorney for the appellee, and was concluded by Mr. D. W. Baker, attorney for the appellant.

18	ELLIS H. ROBERTS, TREASURER OF THE	}	No. 792.
	United States, appellant,		
	vs.		
	THE UNITED STATES OF AMERICA EX REL.		
	Marie A. Valentine.		

(Mr. Justice Shepard delivered the opinion of the court:)

This is an appeal from a judgment ordering a writ of mandamus to issue to the appellant, Ellis H. Roberts, as Treasurer of the United States and ex officio commissioner of the sinking fund of the District of Columbia.

The facts, about which there is no controversy, are substantially these:

Charles E. Evans was a contractor for paving, &c., in the District of Columbia and had an unsettled claim therefor at the time of the passage

of the act of Congress providing for the ascertainment of the indebtedness of said District, through a board of audit, June 20, 1874.

This board was authorized to issue certificates for amounts found to be due, and these were to be redeemed with bonds of the District provided for therein, bearing interest at the rate of 3.65 per cent.

On August 1, 1874, two certificates were issued on behalf of Evan's claims; one for \$19,616.25 and one for \$909.40.

These certificates were withheld from Evans and deposited with the Treasurer, as sinking fund commissioner, who held them subject to the order of the District Commissioners, because the latter had in the meantime made a claim against Evans for repairs necessary on the work that had been done by him. The controversy remained unsettled until March 13, 1876, when Congress abolished the board of audit and prohibited the further issue of the 3.65 bonds. On June 16, 1880, another act was passed authorizing the redemption of outstanding certificates of the board of audit by the issue of said bonds, and authorizing suits in the

19 Court of Claims upon certain contested claims. Judgments that might be rendered in the Court of Claims were to be discharged in the same manner. As the 3.65 bonds began to sell at a premium Congress, by act of March 3, 1881, authorized the Treasurer to sell the bonds and pay the certificates and judgments from the proceeds, when it should be for the interest of the District. The act of July 4, 1884, provided that no certificate should be paid unless presented for payment within one year from the date of the act.

Prior to January, 1881, the two certificates were assigned by Evans to Thomas J. Fisher. Demand was made upon the Treasurer for their redemption under the act of 1880 and was refused. Said Fisher then instituted suit against the District in the Court of Claims, as authorized by the said act, upon both certificates and sundry other claims and demands. Fisher dying, the suit was regularly prosecuted in the name of his executors.

A compromise seems to have been made with the District Commissioners, and, upon the advice of the Department of Justice, the certificates were on June 9, 1890, delivered to the attorney for the executors.

They were at once presented to the Treasurer, with request to redeem them in 3.65 bonds.

He refused payment either in bonds or money, unless a judgment should be had in the Court of Claims in the said suit for his protection. Thereupon, in order to obtain said judgment, the plaintiff amended his pleadings, striking therefrom all demands save said two certificates, and the court entered judgment thereon June 12, 1890. The Treasurer then paid the judgments in money, with interest at 3.65 per annum. About this time the executors of Fisher assigned to one Marcus W. Robinson all claims of every nature which they had under the assignment of Evans to Fisher, and Robinson in turn assigned to the petitioner, Marie A. Valentine.

On the 13th day of August, 1894, an act of Congress was duly passed providing as follows:

20 "That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June sixteenth, eighteen

hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rates of interest due upon said certificates from their date up to the date of approval of said act providing for their redemption." (28 Stat., 271.)

The said Marie A. Valentine, as assignee of the said certificates, made demand of the Treasurer for the payment of the additional interest in said act provided. This was refused in a written communication, dated November 3, 1897, giving the following reasons:

"You will note that the act referred to provides for additional interest to be paid only upon board of audit certificates redeemed by the Treasurer under the act of June 16, 1880. Neither of the certificates recited in your petition was redeemed by the Treasurer, and they are not in his possession.

"You state that certain judgments of the Court of Claims were issued in lieu of these certificates. These judgments were paid by this office in the manner prescribed by law, but neither of them states that they were issued in lieu of or upon debts of the District of Columbia represented by board of audit certificates.

"The Treasurer has therefore no authority to pay the additional interest you demand."

Petition for mandamus was then filed, setting out substantially the facts above stated.

The defendant made the following return to the rule to show cause:

"Comes now the defendant, and for cause why the writ of mandamus should not issue as in and by the petition in the above-entitled cause prayed shows that the certain board of audit certificates (so called in the said petition mentioned, namely, the certificates) numbered 8879 and

19429 were not redeemed by him or any person holding the office of Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States hereto annexed and made part hereof, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims either of the said judgments was based."

The return was held insufficient and no leave having been asked to amend, judgment was entered granting the writ of mandamus as prayed.

1. It is clear that if the relator has any right at all under the act of Aug. 13, 1894, she has pursued the only remedy open to her, and the question to be determined is whether, under the facts stated, that remedy is available.

The first assignment of error, to the effect that the court erred in holding that the relator is an assignee of the certificates, can not be sustained.

Treating the demurrer to the return as reaching back to and raising the question of the sufficiency of the allegations of the petition, we find nothing wanting therein in respect of relator's right as assignee of Evans through a successive chain of formal transfers. It is true that the assignment to relator bears date after the payment of the judgments of

the Court of Claims to the executors of Thomas J. Fisher, to whom Evans had assigned the certificates some time after the passage of the redemption act of June 16, 1880, but this seems to us wholly immaterial. We find nothing in the language of the act of August 13, 1894, to justify the contention of the appellant that the assignees therein "mean assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards." On the other hand, it seems, without doubt, to extend its relief to all owners, holders, or assignees of the certificates that had been redeemed under the act of June 16, 1880, without limitation in respect of the time of the accrual of their respective rights and interests.

Being responsible in case of payment to an unauthorized claimant, the defendant had the right to demand satisfactory proof of the genuineness and regularity of the several assignments under which the relator claimed, and had his denial of payment been founded on the insufficiency thereof, after due enquiry, the writ of mandamus would not lie. Had that objection been set up, the relator might have satisfied it by supplementary proofs or else by proceedings at law for the establishment of her claim as against Evans and intermediate assignees; but it was not raised, either directly or by implication, in the written statement of the grounds upon which the payment was refused.

Nor does the return of the defendant, made to the rule to show cause, deny the genuineness or regularity of the relator's claim as assignee; hence it must be regarded as admitted.

2. The second contention, namely, "that the certificates set out in the petition were never redeemed by the Treasurer of the United States and therefore are not certificates within the meaning of the act" (August 13, 1894), is far-fetched and equally untenable with the first one.

The act is general and remedial, and its language affords no ground for saying that the certificates therein referred to as "redeemed" by the Treasurer mean such only as had been redeemed in 3.65 bonds under the provisions of the act of June 16, 1880.

We think it apparent that the word "redeemed," as applied to said certificates, includes in its meaning not only their redemption in the 3.65 bonds at par, as provided in the act of June 16, 1880, but also their payment in cash from the proceeds of such bonds when sold for the purpose by the Treasurer under the supplemental act of March 3, 1881.

This act was passed for the benefit of the District, because in the meantime the 3.65 bonds had risen above par in the market. It was, to that extent and for that purpose, amendatory of the former act and must be considered with it.

Any other view would be most unjust as well as unreasonable.

The single purpose of the act of August 13, 1894, was to compensate holders of valid claims, whose payment had been so long delayed, by giving them additional interest to make up the full legal rate of six per cent for the six years between Aug. 16, 1874—when payment had been suspended—and June 16, 1880, when redemption or payment of the principal with 3.65 per cent interest was provided for. Moreover, the equities of those who had been paid in cash were even greater than those of certificate holders who had been paid in the bonds, because these latter had received the additional benefit of the immediate advance in the value of those bonds. Furthermore, those redemption acts remained in force,

limited in their operation only by the act of July 5, 1884, providing that no certificate should be thereafter paid unless presented within one year from this last date.

As a matter of fact, the return made by the defendant in answer to the rule does not set up any such construction of the act of 1894. The sole ground of refusal to pay the demand of relator, as therein stated, is, "that these Evans certificates" were not redeemed by him or any person holding the office of Treasurer of the United States, and that the only moneys paid by any Treasurer or account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States hereto annexed, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims said judgments were based.

24 The undenied allegations of the petition show that the certificates had at last been surrendered, to wit, June 9, 1890, upon some agreement of compromise with the District, without a judgment. They were immediately presented to the then Treasurer, who refused payment; knowing that the suit was pending upon them in the Court of Claims, he required that they should be reduced to judgments.

When so reduced to judgments and certified to him from the records of that court, he paid the full amounts respectively adjudged, with 3.65 per cent interest. The certificates became merged in the judgments and were presumably filed with and made a part of the record in the Court of Claims. Hence they could not be paid or redeemed as such; but the payment of the judgments was the complete discharge of their obligation. They were thereby paid and as completely "redeemed," in the sense of that word as used in the act of August 13, 1894, as if they had been actually redeemed in bonds under the act of June 16, 1880, without judgment or the necessity of suit.

There is no room for doubt that these judgments were rendered upon the certificates described in the petition, and the defendant does not deny the fact. He simply says that he has no official knowledge and no official record tending to show that such is the fact. The fact is a matter of record in the Court of Claims, and he can readily procure a transcript thereof for his own official files if it be of any real importance. The foregoing being the only defence made in the return, the court did not err in holding it insufficient.

3. The principles which govern the action of the courts in the exercise of jurisdiction over the Executive Departments of the Government have long since been firmly established. *Kendall v. Stokes*, 12 Pet., 524; *Decatur v. Paulding*, 14 Pet., 497; *U. S. ex rel. Dunlop v. Black*, 128 U. S., 40; *Noble v. Union River Logging R. Co.*, 147 U. S., 165; *Seymour v. South Carolina*, 2 App. D. C., 240, 246; *Int. Con. Co. v. Lamont*, 2 App. D. C., 532, 546; *S. C.*, 155 U. S., 303, 308; *Loehren v. Long*, 6 App. D. C., 486, 504.

25 The duty which is sought to be enforced by mandamus must be purely ministerial and existent at the time. The duty of the officer must be plainly defined and one that he is required by the law to perform. In our opinion, these requirements are completely satisfied by

the conditions of this case. The statute conferring the right and imposing the duty is so plain in its terms as to admit of no room for construction.

The situation is quite different from that in *Decatur v. Paulding*, or in *U. S. ex rel. Dunlap v. Black*, *supra*, wherein the duty of construing different laws and determining by which one the rights of the relators were to be governed, was necessarily involved.

Moreover, as we have seen, the defendant did not, in fact, found his refusal to perform upon any such supposed duty of construction of the statute.

4. The further point has been made that the record does not show in whose possession the two certificates were when the suit was filed. Presumably they are on file in the Court of Claims in the records of the suits therein; but at the same time some doubt as to this is raised by certain recitals of the petition. Whilst they are of a nature, especially since their merger in the judgments, that renders their possession of comparative unimportance, yet the defendant, as a public officer, is entitled to as complete protection from all danger of further litigation as can be afforded by the judgment of the court. Consequently, if these certificates were not surrendered in procuring the judgments upon them, it is but just that the judgment in this case should be so amended as to require their surrender to the defendant as a condition precedent to the execution of the writ.

The judgment will be affirmed with costs and the cause will be remanded with leave to amend that judgment, if need be, in accordance with the foregoing suggestion.

It has been suggested that this cause be treated as one to which
26 the United States are parties, because of the official character of the defendant, and that, as a consequence, no costs should be awarded.

It is to be regretted that no action has ever been taken by Congress to meet the exigencies of such cases as this, both in respect of exempting public officers from liability for costs, and providing for the substitution of their successors, as parties, in case of death, resignation, or removal.

The courts have no discretion in the premises. In the absence of legislation making another rule, they must treat the action as personal—the writ as directed to the person temporarily occupying the office, and not to the office itself. It is for this reason that the Supreme Court has invariably refused to permit the defendant's successor in office to become a party to the cause in his stead. *U. S. ex rel. Bernardin v. Butterworth*, 169 U. S., 600. In that case the subject is carefully reconsidered and the doctrine reaffirmed by the majority of the court, after a review of former decisions.

Mr. Justice Shiras, who delivered the opinion of the majority, adopted a part of the opinion in *U. S. v. Boutwell* (17 Wall., 604), from which we quote the following extracts as governing the question of costs here presented: "It is the personal default of the defendant that warrants impetration of the writ, and if a peremptory mandamus be awarded, the costs must fall upon the defendant. * * * If a successor in office may be substituted, he may be mulcted in costs for the default of his predecessor, without any delinquency of his own."

Affirmed.

27

TUESDAY, May 17th, A. D. 1898.

ELLIS H. ROBERTS, TREASURER OF
the United States, appellant,
vs.
THE UNITED STATES OF AMERICA
ex rel. Marie A. Valentine.

No. 792. April term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed, with costs; and that this cause be, and the same is hereby, remanded to the said supreme court with leave to amend its judgment, if need be, in accordance with the suggestion contained in the opinion of this court.

Per Mr. Justice SHEPARD.

May 17, 1898.

28

Court of appeals of the District of Columbia.

I, Robert Willett, clerk of the court of appeals of the District of Columbia, do hereby certify that the foregoing printed and type written pages, numbered from 1 to 27, inclusive, contain a true copy of the transcript of record and proceedings of the said court of appeals in the case of Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States ex rel. Marie A. Valentine, No. 792, April term, 1898, as the same remains upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals at the city of Washington this 25th day of May, A. D. 1898.

[SEAL.]

ROBERT WILLET,

Clerk of the Court of Appeals of the District of Columbia.

29

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the court of appeals of the District of Columbia, greeting:

Being informed that there is now pending before you a suit in which Ellis H. Roberts, Treasurer of the United States, is appellant, and The United States ex rel. Marie A. Valentine is appellee, which suit was removed into the said court of appeals by virtue of an appeal from the supreme court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said court of appeals and removed into

30 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

31 [Indorsed:] Supreme Court of the United States. No. 312,
October term, 1898. Ellis H. Roberts, Treasurer of U. S., vs.
The U. S. ex rel. Marie A. Valentine. Writ of certiorari.

32 In the Supreme Court of the United States, October term, 1898.

ELLIS H. ROBERTS, TREASURER OF THE	}	No. 312.
United States, petitioner,		
<i>vs.</i>		
THE UNITED STATES EX REL. MARIE		
A. Valentine.		

Stipulation as to return of writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause, that the certified copy of the transcript of the record therein, now on file in the office of the clerk of the Supreme Court, may be taken as the return of the clerk to the writ of certiorari issued herein, subject, however, to the following amendments, annexed hereto, of proceedings and proofs occurring at the hearing which it is agreed are properly to be inserted in the record, the same having been before the supreme court of the District and also before the court of appeals.

JOHN K. RICHARDS,
Solicitor-General.

B. E. VALENTINE,
Counsel for Respondent.

It is stipulated that the following matter be inserted in the transcript of record, certified in the Supreme Court of the United States on an appeal herein, between pages 25 and 26, as shown by side folios of the printed record, to wit:

“At the hearing had before the supreme court of the District of Columbia the Treasurer of the United States was notified to produce and did produce from the records of his office the following letter written by B. E. Valentine, claimant's attorney, June 13, 1890, to the Secretary of the Treasury, and the indorsements thereon by the Assistant
33 Secretary of the Treasury, acting president of the Board of Commissioners of the District of Columbia, and the Secretary of the Treasury, and that said documents were read in evidence and ordered to be made part of the record by the court, as follows, to wit:

Letter of B. E. Valentine, claimant's attorney, to Secretary of the Treasury, June 13, 1890.

“SIR: We present herewith duly certified and authenticated copies of judgments of the Court of Claims, rendered June 12, 1890, against the

District of Columbia for \$900, \$15,000, \$10,000, and \$19,525⁶⁵/₁₀₀, respectively, in cases Nos. 234, 235, & 246, and we request the payment thereof in 3.65 bonds, as provided in sec. 6 of act of June 16th, 1880, chap. 243.

"These judgments were all rendered by consent of the defendant in pursuance of a compromise and settlement of litigation agreed upon between the claimants and the District Commissioners.

"This settlement, by which claimants receive but a small portion of their claims and the District of Columbia, according to the report of its own auditor, effects a saving of about \$45,000, was concluded upon the express understanding on the part of the claimant that the amounts of the judgments should be paid in 3.65 bonds, as provided in said sec. 6 of the act of June 16, 1880. And in view of the advantages accruing to the District from such settlement the Commissioners of the District agreed that these judgments should, if possible, be so paid in 3.65 bonds or that the claimants should not be considered as concluded by the settlement.

"We therefore, as attorneys of record for said claimants and intervenor, respectfully request the delivery of said 3.65 bonds to us for the respective amounts shown by said judgments to be due our clients.

34 "A letter from the Attorney-General has been sent to the Department showing that said judgments were rendered by consent and that there will be no appeal therefrom.

"Respectfully,

"B. E. VALENTINE,

"Attorney for Claimant.

"GEO. A. KING,

"Attorney for Intervenor Davis.

[Endorsed.]

"TREASURY DEPARTMENT,

"June 13, 1890.

"Respectfully referred to the Hon. Commissioners of the District of Columbia for verification.

"GEO. S. BATCHELDER,

"Assistant Secretary.

[Further endorsement.]

"It was orally agreed that if the amount stipulated for which judgments might be rendered could not be paid in 3.65 D. C. bonds the agreement of compromise might be cancelled.

"June 13, 1890.

"L. G. HINE,

"Acting President Board of Commissioners, D. C.

[Further endorsement.]

"TREASURY DEPT.,

"June 13, 1890.

"Respectfully referred to the Hon. Attorney-General for his statement as to whether or not there was an agreement or understanding which

- 35 would be binding on the United States that the judgments rendered by the Court of Claims in the within-named cases were to be paid by the issue of 3.65 bonds.

“W. WINDOM, *Secretary.*”

J. K. RICHARDS,
Solicitor-General.

B. E. VALENTINE,
Respondent's Counsel.

(Endorsed:) Ellis H. Roberts, Treasurer of the United States, vs. The United States of America ex rel. Marie A. Valentine. Stipulation as to return to writ of certiorari. Court of appeals, District of Columbia. Filed Nov. 11, 1898. Robert Willett, clerk.

- 36 *Court of appeals of the District of Columbia.—Return to writ of certiorari.*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States of America ex rel. Marie A. Valentine, together with the amendments mentioned in said stipulation and hereto annexed constitute a full, true, and complete transcript of the record upon which said cause was heard in the court of appeals of the District of Columbia, together with all proceedings in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals at the city of Washington this 12th day of November, A. D. 1898.

[SEAL.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

- 37 (Indorsed:) File No., 16896. Supreme Court U. S., October term, 1898. Term No., 312. E. H. Roberts, Treasurer, &c., petitioner, vs. The U. S. ex rel. Marie A. Valentine. Writ of certiorari and return. Filed Nov. 14, 1898.

